

| | | | |
|-------------------------------|------------------------|---------------------|--|
| Notice of Allowability | Application No. | Applicant(s) | |
| | 09/904,294 | HERSMAN ET AL. | |
| | Examiner | Art Unit | |
| | Edna Wong | 1753 | |

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to Amendment dated February 9, 2005.
2. The allowed claim(s) is/are 1-12.
3. The drawings filed on 09 February 2005 are accepted by the Examiner.
4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some*
 - c) None
 of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

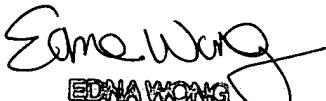
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) hereto or 2) to Paper No./Mail Date _____.
 - (b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. Notice of References Cited (PTO-892)
2. Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. Notice of Informal Patent Application (PTO-152)
6. Interview Summary (PTO-413),
Paper No./Mail Date March 7, 2005.
7. Examiner's Amendment/Comment
8. Examiner's Statement of Reasons for Allowance
9. Other _____.


EDNA WONG
PRIMARY EXAMINER

Drawings

The drawings were received on February 9, 2005. These drawings are approved by the Examiner.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Paul C. Remus on March 7, 2005.

The application has been amended as follows:

IN THE Claims

Claims **13-22** have been cancelled.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Claims **1-12** are allowable over the prior art of record because the prior art does not teach or suggest a polarizing process comprising the steps of moving, propagating, containing and immersing as presently claimed, esp., the step of moving a flowing mixture of gas, at least containing a polarizable nuclear species and vapor of at least

one alkali metal, with a transport velocity that is not negligible when compared with a natural velocity of diffusive transport.

The prior art does not contain any language that teaches or suggests the above.

Ryan et al. teaches an up-welling of gases (col. 4, lines 6-13). The word "up-welling" does not imply any velocity. It only implies a direction. Thus, *Ryan et al.* do not teach moving a flowing mixture of gas, at least containing a polarizable nuclear species and vapor of at least one alkali metal, with a transport velocity that is not negligible when compared with a natural velocity of diffusive transport.

Furthermore, the fact that the present invention flows gas faster than the velocity of diffusion allows it to operate as a single-pass sequential process, in which different stages in the polarization process happen at different locations in the polarizing apparatus and those locations (and polarization steps) are not revisited by the same sample of gas.

Therefore, a person skilled in the art would not have been motivated to adopt the above conditions, and a *prima facie* case of obviousness cannot be established.

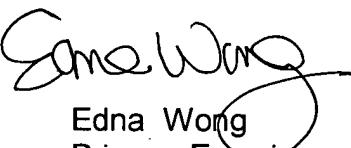
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Edna Wong whose telephone number is (571) 272-1349. The examiner can normally be reached on Mon-Fri 7:30 am to 3:30 pm, Flex Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen can be reached on (571) 272-1342. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Edna Wong
Primary Examiner
Art Unit 1753

EW
March 4, 2005